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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 28 1976

Memorandum

To: Deputy Secretary of State Charles W. Robinson,
Chairman, NSC Under Secretaries Committee

Subject: Deep Seabed Mining Legislation

Reference is made to your memorandum of December 1, 1976, enclosing for comment a draft options paper on deep seabed mining legislation.

I am gratified that the Executive Branch is taking seriously the need to develop a policy on this matter which has been too long ignored. I am disappointed, however, that the options paper which deals with the subject is not, in my view, a suitable vehicle for decision making.

The background sections of the paper are inadequate. They do not explain or analyze, (a) how the Government perceives its principal policy objectives in the law of the sea; (b) how the Congress and the industry perceive the problem and possible solutions to it; and (c) how legislation could be designed to best enhance what should be our dual policy objectives of negotiating a treaty which protects the unique position of the United States in deep sea mining and at the same time also protects that interest should the treaty not be obtainable at a price we can afford to pay. As a result, wise and informed judgments on the legislative options will be made difficult for senior policy makers if they are to use this paper.

As a result of our own study and analysis of this problem within the Department of the Interior, we have reached certain conclusions regarding deep sea mining legislation. In addition, we have made a variety of suggestions to the Department of

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State concerning the need for improving this paper. While a few of our comments have been taken into account, most have not. The Law of the Sea Task Force should have this paper remanded to it for substantial review and improvement before it is forwarded to the President.

I enclose a copy of a memorandum sent by our representative on the LOS Task Force to the Department of State on November 22, 1976. Most of the objections and comments on the earlier draft of the State paper which this memorandum comments on still pertain to the December 1 draft. Moreover, that memorandum sets out a proposed option for legislative action which I favor, and I would like to see that option fully set forth in the body of the State Department options paper.

I wish, in particular, to underscore one of the main points of that memorandum. Either this paper should be limited to the general policy decision whether to support or oppose legislation on deep sea mining or, alternatively, it should lay out in a clear fashion not only that policy issue but the main legislative options available along with an analysis of them, including their advantages and disadvantages. One thing in particular that I find disturbing about this paper is that the precise legislative options do not even deal with the question of how to protect the enormous investments which may be made now, from a treaty which may impair those investments later. There are, in my view, two main reasons for seeking legislation--and this has been true for several years. First, the question of investment protection for investments made prior to the treaty and, second, the question of how to promote the negotiations by using the legislation to affect the bargaining atmosphere. The first of these questions is relegated to an annex and left for subsequent consideration.

Accordingly, I cannot approve the submission of this draft to the President unless the issue of investment protection is elevated as one of the two main subjects of the paper and the paper substantially revised to take into account that element, together with the other changes and amendments suggested in the attached memorandum.

W. S. Moynihan

Secretary of the Interior

Enclosure